FILED
APR 12 1926
WM. R. STANSBURY
CLERK

No. 1[redacted] 3[redacted] 48

Supreme Court of the United States

OCTOBER TERM, 1925.

In the Matter
of

OSCAR L. GUBELMAN, JAMES F. SHAW, ROLLIN C. NEWTON, HERBERT B. SMITHERS, JOHN R. HALL, MARY W. KNAUTH and THEODORE W. KNAUTH, individually and as co-partners doing business under the firm name and style of KNAUTH, NACHOD & KUHNE,

Bankrupts,

ALEXANDER LATZKO, WILLIAM LATZKO, CHARLES LATZKO, SAMUEL POPPER and EMIL HOCHSTEIN, as co-partners doing business under the firm name and style of N. LATZKO and A. POPPER,

Petitioners-Appellants,

MIDDLETON S. BORLAND,

Trustee-Appellee.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

CHARLES A. BRODEK,
BORRIS M. KOMAR,
Counsel for Petitioners,
67 Wall Street,
New York City.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.

TABLE OF CONTENTS.

PETITION.

PAGE

Nature of Proceedings and Decision Below 2

Errors of the Circuit Court of Appeals 3

Important Questions of Commercial Law Involved .. 7

Verification 11

Certificate of Counsel 11

BRIEF OF PETITIONERS.

FACTS 12

POINT ONE—The Circuit Court of Appeals erred in holding that the memorandum accompanying the check for $15,000 and stating that the same was delivered to the bankrupts "for account of" petitioners did not constitute a part of the contract between them in regard to the deposit of said check 15

POINT TWO—The Circuit Court of Appeals erred in disregarding the settled legal and technical meaning of the expression "for account of" used in the memorandum accompanying the check for $15,000 particularly as there was no evidence whatsoever to show that the parties to the transaction intended to use the expression in any other sense 19

PAGE

POINT THREE—The expression "for account of" when used in respect to negotiable instrument, is equivalent to "for collection" and establishes between the bank and its depositor the relationship of agent and principal and not of creditor and debtor 24

POINT FOUR—The Circuit Court of Appeals erred in holding that where a negotiable instrument indorsed in blank is delivered by the depositor to his bank with specific instructions in regard thereto, and the bank deposits said negotiable instrument with another bank but omits to forward said instructions, the depositor is thereby divested of title to said instrument 33

CONCLUSION 44

TABLE OF CASES AND AUTHORITIES.

PAGE

American National Bank v. Miller, 229 U. S., 517 .. 31

Bank of America v. Waydell, 187 N. Y., 115, ... 8, 17
Bank of Metropolis v. First National Bank, 19 Fed., 301 26
Bargett v. Orient Mutual Ins. Co., 3 Bos., 385 22
Barker v. Prentice, 6 Mass., 430 16
Beaver Board Co. v. Imbrie & Co., 282 Fed., 655 43
Re Berry, 147 Fed., 208 9
Boone County National Bank v. Latimer, 67 Fed., 27 8
Bradshaw v. Bradbury, 64 Mo., 3[illegible] 24
Burton v. United States, 196 U. S., 283 9

Central National Bank of Baltimore v. Connecticut Mutual Life Insurance Co., 104 U. S., 54 35
Clift v. Schwabe, 3 C. B., 457 23
Commercial National Bank v. Armstrong, 148 U. S., 57 25
8 Corpus Juris, 85 15

Drovers' National Bank v. O'Hare, 119 Ill., 646 42

Farmers & Mechanic's Nat. Bank v. King, 57 Pa., 202 38
Findley's Executors v. Findley, 11 Gratt (Va.), 438 23
First Nat. Bank of Belmont v. First Natl. Bank of Barnesville, 58 Oh. St., 207 ..... 29, 30
First National Bank of Chicago v. Reno County Bank, 3 Fed. Rep., 257 30
First Nat. Bank of Crown Pt. v. First Nat. Bank of Richmond, 76 Ind., 561 32
First National Bank v. Lynn, 132 Mass., 227 29
Frieberg v. Stoddard, 28 Atl. 1111 27

German Fire Ins. Co. v. Kimble, 66 Mo. App., 370 .. 16
Goetz v. Bank of Kansas City, 119 U. S., 551 33

PAGE

Hackett v. Reynolds, 114 Pa., 328 29
Havens, In rem, 2 Bened., 309 32
Hewitt v. Hayes, 205 Mass., 356 39
Holt & Co. v. Collyer, 16 L. R. Chan. Div., 718 23
Hunt v. Townsend, 26 S. W., 310 18
Hutchinson v. Nat. Bank of Commerce, 145 Ala., 196 18
Hutchinson v. Nat. Bank of Commerce, 41 So., 143 .. 39

In re Jarmulousky, 249 Fed., 319 32

King v. Bowling Green Trust Co., 145 A. D., 398 .. 17

Leary v. Blanchard, 48 Me., 269 29
Lee v. Chillicothe Branch of State Bank, 15 Fed. Cas. (Nos. 8186, 8187), 150 ..... 28, 32
Levi v. Natl. Bank of Missouri, 5 Dill, 104 32
Long v. Bank of Commerce, 38 S. W., 886 18

Manufacturer's Natl. Bank v. Continental Bank, 148 Mass., 553 32
Matter of Marine, 169 A. D., 65 16
Maryland Coal Co. v. Cumberland & Pa. R. R. Co., 41 Md., 343 24
Merill v. Bank of Norfolk, 19 Pick., 32 38
Metropolitan Exhibition Co. v. Ewing, 42 Fed., 198 24
Morse on Banks & Banking (5th Ed.), Sec. 567 32
Morse on Banks & Banking (5th ed.), page 409 ... 16, 17
Morse on Banks & Banking (5th ed.), page 458 40
Myassa-Arcadia Drainage District v. First Natl. Bank, 3 Fed. (2nd), 648 26

New York Negotiable Instruments Law, Section 35 .. 5, 6
New York Negotiable Instruments Law, Section 66 ..... 5, 19, 33

Old Natl. Bank of Evansville v. German American Natl. Bank of Peoria, 155 U. S., 556 26

PAGE

Roca v. Byrne, 145 N. Y., 182 36
Rochling Bros. v. Borland 20
Royea's Estate, 143 Fed., 182 41

Shore v. Wilson, 9 Clarke & Fin, 355 ..... 22, 23

Titlow v. McCormack, 236 Fed., 209 41
Treuttell v. Barandon, 8 Taut, 100 28
Turney v. Guthrie, 15 N. Y. Sup., 679 16
Tyson v. Western Natl. Bank, 25 Atl., 520 26

Union Stock Yards Natl. Bank v. Dumond, 33 Ill. App., 102 43
United States Natl. Bank v. Geer, 55 Neb., 462 28

Van Alen v. American Natl. Bank, 52 N. Y., 1 36

White v. Miner's Natl. Bank, 102 U. S., 658 .... 4, 5, 6, 7, 20, 21, 22, 24, 25